

REMARKS

Claims 1-14 are pending in the present application. Claims 1-14 were rejected. No claims have been amended.

I. Rejection of Claims 1, 4, 5, 11, 12, and 14 under 35 U.S.C. § 103(a)

Claims 1, 4, 5, 11, 12, and 14 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent Application No. 2001/0021196 A1 (“Weigl”) in view of U.S. Patent No. 5,396,494 (“Roposh”). Applicant respectfully submits that the rejection should be withdrawn for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” Id., at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 1 recites, in relevant parts, “transmitting messages in transmission time slots at a preselected transmission rate, **a transmission rate within a transmission time slot being changeable** in such a way that a message provided for the transmission time slot is transmitted repeatedly within the transmission time slot.” Similarly, claims 11 and 14 recite, in relevant parts, “second means for **changing a transmission rate within a transmission time**

slot in such a way that a message provided for the transmission time slot is transmitted repeatedly within the transmission time slot.”

The Examiner states that although “Weigl fails to explicitly teach a transmission rate within a transmission time slot being changeable,” Roposh allegedly teaches “that **a time frame may be divided into a greater or lesser number of time slots** merely by *increasing or decreasing the transmission rate* (see column 7 lines 60-66).” (Office Action, page 3, emphasis added). The Examiner’s contention is that Roposh discloses that **a change in transmission rate** will create **a change in the number of time slots within a time frame**. However, even if one assumes for the sake of argument that this assertion is correct, this assertion clearly does not satisfy the claimed limitation that “**a transmission rate within a transmission time slot** being changeable.”

The section of Roposh cited by the Examiner (col. 7, lines 60-66) indicates the following:

It is seen from the FIG. 4 that each time frame of the bandwidth management period comprises 57 time slots (as mentioned above). (The division of a time frame into 57 time slots is based on the transmission rate of bus 140 (135). It is to be understood of course, that a time frame may be divided into a greater or lesser number of time slots merely by increasing or decreasing the transmission rate of bus 135.)

The above-quoted section of Roposh is clearly not disclosing “changing **a transmission rate within a transmission time slot**”; instead, Roposh is merely stating an obvious logical fact, i.e., in a scenario where **the overall time frame remains fixed** in length and **the number of time slots depends on dividing the time frame by the transmission rate**, then **a change in the transmission rate will change the proportional number of time slots**. However, stating this obvious logical fact does not disclose or suggest a system that actually changes transmission rates, let alone “changing **a transmission rate within a transmission time slot**.” Roposh clearly indicates in many sections that the disclosure relates to “a service that requires **a fixed bandwidth with a constant amount of delay** through a network.” (Roposh col. 4, lines 28-30). Absolutely nothing in Roposh discloses or suggests a system that actually changes transmission rates, let alone “a transmission rate **within a transmission time slot** being changeable.”

For at least the foregoing reasons, independent claims 1, 11, and 14, as well as their dependent claims 4, 5 and 12, are allowable over Weigl in view of Roposh.

II. Rejection of Claims 2, 3, 6-10, and 13 under 35 U.S.C. § 103(a)

Claims 2, 3, 8-10, 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weigl and Roposh in further view of U.S. Patent No. 4,709,376 ("Kage"). Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weigl and Roposh, in further view of U.S. Patent Application No. 2002/0126691 ("Strong"). Applicant respectfully submits that the rejections should be withdrawn for at least the following reasons.

Claims 2, 3, 6-10 and 13 ultimately depend from claim 1 or claim 11. As noted above in connection with claims 1 and 11, Weigl and Roposh fail to teach or suggest "a **transmission rate within a transmission time slot being changeable** in such a way that a message provided for the transmission time slot is transmitted repeatedly within the transmission time slot." Since the secondary references Kage and Strong clearly do not remedy the deficiencies of Weigl and Roposh as applied against parent claims 1 and 11, the overall teachings of Weigl, Roposh, Kage and Strong cannot render obvious dependent claims 2, 3, 6-10 and 13.

For at least the foregoing reasons, rejections of claims 2, 3, 6-10 and 13 should be withdrawn.

CONCLUSION

It is respectfully submitted that all pending claims of the present application are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully Submitted,

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(P. no.
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Dated: December 22, 2008

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